

U.S. Serial No. 10/552,130

Filed: October 5, 2005

**PROTECTIVE SHIELD AND PROTECTIVE EQUIPMENT
INCLUDING SUCH A SHIELD AND A STORAGE BOX**

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REMARKS**I. Introduction**

The undersigned thanks Examiner Blizzard for his review and consideration of the present Application, including the Examiner's time spent discussing the present Application in a July 22, 2010 telephone interview.¹ In response to the final Office Action mailed February 2, 2010 ("February 2010 Action"), the undersigned submits the present amendment and remarks ("August 2010 Response"). Upon entry of the August 2010 Response, claims 1, 4, and 6-11 are pending in the application. The August 2010 Response cancels claim 3, amends claims 1 and 6, and adds new claim 11. The Examiner has withdrawn claims 8-10 from consideration as directed to a non-elected invention. No new matter has been added by the August 2010 Response. Support for the claim amendments may be found, among other places, in the non-limiting embodiments described and shown on page 2, lines 15-29 and page 5, lines 22-26 of the Application as filed. Support for new claim 11 may be found, among other places, in the non-limiting embodiments described and shown in page 3, lines 29-37 and page 6, line 18-page 7, line 11 of the Application as filed. The August 2010 Response is believed to overcome all of the prior Office Action rejections, and allowance of the pending claims is respectfully requested.

II. The April 2, 2010 Response & April 29, 2010 Advisory Action

In an April 2, 2010 Response ("April 2010 Response"), the undersigned submitted a response to the February 2010 Action, in which the February 2010 Action rejected claim 3 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and

¹ Interview Summary: During the July 22, 2010 telephone interview, the undersigned, the Examiner, and the Examiner's supervisor discussed proposed claim amendments to the pending independent claims, as well as the prior art of record.

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distinctly claim the subject matter which the Applicant regards as the invention. The February 2010 Action also rejected claims 1, 3, 4, and 5² under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,297,749 to Smith ("Smith") in view of U.S. Patent No. 6,567,220 to McDonald ("McDonald"), and rejected claims 6 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Smith in view of U.S. Patent No. 6,675,800 to Keller ("Keller").

In the April 2010 Response, Applicant cancelled claim 3 in response to the 112 rejection and presented arguments as to why the 103 rejections of claims 1, 4, 6, and 7 did not establish a *prima facie* obviousness case. In an April 29, 2010 Advisory Action, the 112 rejection was overcome, but the 103 rejections were maintained. Applicant respectfully traverses the 103 rejections and requests reconsideration in light of the foregoing amendments and the following remarks, withdrawal of the rejections, and allowance of all pending claims.

III. Smith

Smith teaches the use of a mask 14 having a body 18 with a display screen 20 mounted in an opening defined by the body 18 and a strap 36 connected to both sides of the body 18. Smith, col. 2, ll. 32-35; Figure 2A. The display screen 20 has an internal surface 22, which is divided into upper and lower instrument display sections 38, 39, an aircraft external environment image display section 40, and a conventional viewing section 42. Smith col. 2, l. 64-col. 3, l. 1; Figure 3.

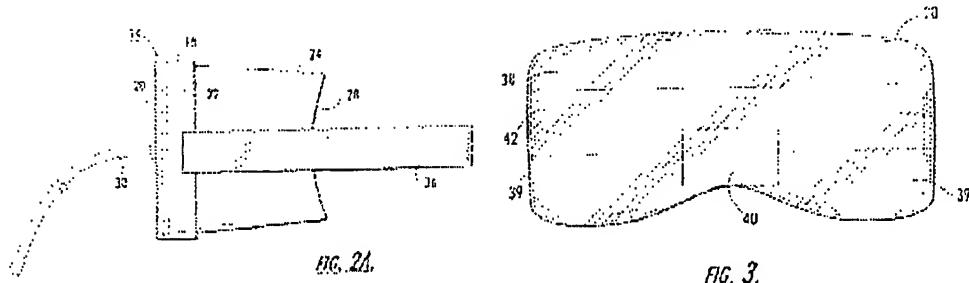
² The February 2010 Action included claim 5 in the rejection, although claim 5 was cancelled by the preceding October 7, 2009 Response.

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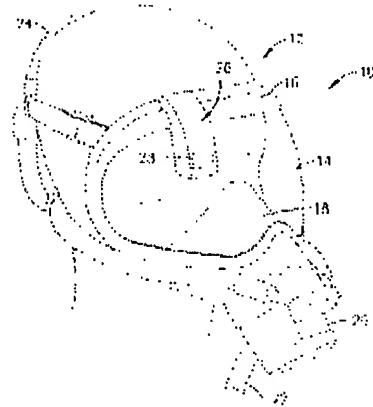
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**IV. McDonald**

McDonald teaches a full-face emergency oxygen mask 10 with a gas mask 18 to cover the nose and mouth of a wearer, where the mask 10 is equipped with a display device 26 that is supported on seal 18 of the mask 10. McDonald, col. 3, ll. 4-13. The mask 10 "would be normally stowed in a location adjacent the wearer until an emergency develops; at this point, the mask may be grasped and pulled from stowage in the manner identical to present-day emergency oxygen masks." McDonald, col. 2, ll. 28-31.



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VI. Response To The § 103 Rejections

None of the cited references, alone or in combination, teach or suggest the subject matter recited in amended independent claims 1 and 6. Thus, separately or in combination, the references cannot establish a *prima facie* case of anticipation or obviousness.

The February 2010 Action relies on Smith as teaching a protective shield with a display device, where the shield includes a locking means for temporarily fixing the shield to a face mask for supplying breathing gas. The February 2010 Action acknowledges that Smith does not explicitly teach or suggest a display device that is removably mounted to the outside of the shield. In addition to the reasons set forth in the April 2010 Response, Applicant asserts that Smith also fails to teach or suggest a display device being configured to be repeatedly mounted to and released from the shield by hand without the use of any tools.

The February 2010 Action relies on McDonald as teaching a display device that is removably mounted to the outside of the shield. Specifically, the February 2010 Action analogizes McDonald's statement that "[w]hile the described embodiment is a purpose-built vision mask, it will be understood that otherwise conventional masks could readily be retrofitted with display devices in accordance with the invention" (McDonald, col. 4, ll. 32-36) as teaching "removably mounted."

In the April 2010 Response, Applicant explained that one of skill in the art will understand the term "retrofit" as used by McDonald to mean that the display device is permanently added to conventional emergency oxygen masks. In response, the Advisory Action stated that a display device that has been retrofitted onto a conventional emergency oxygen mask

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is analogous to being "removably mounted" because "if something can be mounted onto something then it could also be demounted."

Applicant respectfully disagrees that a "retrofitted" mask of McDonald is analogous to the claimed invention. Specifically, Applicant asserts that one of skill in the relevant art will understand the term "retrofit" as used by McDonald to mean that the display device is permanently attached to a conventional emergency oxygen mask through some means of attachment such as gluing, riveting, or other mounting means. This understanding is consistent with the teaching of McDonald that the display devices are retrofitted onto conventional emergency oxygen masks, which are not already equipped with attachment locations for a display device.

Although Applicant respectfully disagrees with the characterization of the retrofitted mask of McDonald as teaching a "removably mounted" display device, claims 1 and 6 have been amended to recite "a display device configured to be repeatedly mounted to and released from the shield by hand without the use of any tools." Thus, McDonald does not teach or suggest each and every element of amended independent claims 1 and 6.

Moreover, while the suggestion in the Advisory Action that "if something can be mounted onto something then it could also be demounted" may be physically possible, removing a display device from a retrofitted conventional emergency oxygen mask will (1) require the use of some type of tool and (2) inevitably destroy some part of the display device/gas mask retrofit in the process. As a result, the "demounted" McDonald mask will no longer have a functional shield, a functional display device, or a display device that can be repeatedly mounted to and released from the shield by hand without the use of any tools.

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Furthermore, it would not have been obvious to one of skill in the relevant art to modify the emergency oxygen mask of McDonald to include this missing feature because McDonald teaches away from having a display device configured to be repeatedly mounted to and released from the shield by hand without the use of any tools. "A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)." MPEP § 2141.02(VI). For example, McDonald teaches that emergency oxygen masks that lack display devices present a problem that was addressed by the McDonald mask. Specifically, McDonald teaches that "in the recent past two commercial airliners have been lost after the aircrew reported smoke within the cockpit, this occurring even though the crew successively donned oxygen masks." McDonald, col. I, II, 31-34. Therefore, McDonald explicitly teaches away from the use of emergency oxygen masks in the cockpit that lack a display device. As a result, one of ordinary skill in the relevant art would not modify the emergency oxygen mask of McDonald (either the purpose-built or the retrofitted version) to include a display device configured to be repeatedly mounted to and released from the shield by hand without the use of any tools because the ability to use an emergency oxygen mask without a display device attached was the precise problem in the prior art that McDonald was attempting to solve.

Because neither Smith nor McDonald, nor any other relevant prior art of record, singly or in combination, appear to teach or suggest the missing elements, in combination they fail to render obvious the subject matter of amended independent claims 1 and 6. These claims are therefore allowable. Dependent claims 4, 7, and 11 are allowable at least by virtue of their

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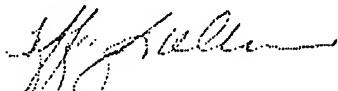
ultimate dependence from independent claims 1 and 6. The undersigned respectfully requests reconsideration and withdrawal of these rejections.

CONCLUSION

The amendments and the above remarks completely responded to the Office Action and place the application in condition for allowance, which is respectfully requested. EXCEPT for the issue fees payable under 37 C.F.R. § 1.18, the Director is authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 C.F.R. §§ 1.16 and 1.17 that may be required, including any required extension of time fees, or credit any overpayment to Deposit Account Number 11-0855. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

If there are any matters that can be addressed by telephone, the Examiner is respectfully urged to contact the undersigned attorney at 404-815-6608.

Respectfully submitted,



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